Apache Tribe of Oklahoma et al v. Chalepah et al Doc. 1

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

(1) APACHE TRIBE OF OKLAHOMA (2) LOUIS MAYNAHONAH, an individual Plaintiff, v. (1) ALONZO CHALEPAH, an individual (2) UNITED STATES DEPARTMENT OF THE INTERIOR Defendants.	)	Case No.

COMPLAINT

Plaintiffs, Apache Tribe of Oklahoma and Louis Maynahonah, for their claims against Defendants, Alonzo Chalepah and the United States Department of the Interior, allege and state as follows:

PARTIES

1. Plaintiff, Apache Tribe of Oklahoma, is a federally recognized Indian Tribe with its tribal headquarters located in the Western District of Oklahoma.

2. Plaintiff, Louis Maynahonah, is a member of the Apache Tribe of Oklahoma and resides in the Western District of Oklahoma.

3. Defendant Alonzo Chalepah is a member of the Apache Tribe of Oklahoma and resides in the Western District of Oklahoma.

4. Defendant, United States Department of the Interior is a federal agency with oversight of the Bureau of Indian Affairs – Anadarko Agency, which is located in the Western District of Oklahoma.

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JURISDICTION

5. This court has subject matter jurisdiction pursuant to 5 U.S.C. § 702 *et seq*. and 28 U.S.C. §1331.

VENUE

6. Venue is appropriate under 28 U.S.C. § 1391 because the parties reside in this judicial district and a substantial part of the events or omissions giving rise to the claims occurred in this judicial district.

ALLEGATIONS

7. On July 6, 2005, Alonzo Chalepah ("Chalepah") entered a plea of nolo contendere to the crime of actual physical control of a vehicle while intoxicated pursuant to 47 O.S. § 11-902, which is a felony. This was Chalepah's second and subsequent offense. At the same time, Chalepah was found guilty of actual physical control of a vehicle while intoxicated. Chalepah has since been arrested for the crime of actual physical control of a vehicle while intoxicated pursuant to 47 O.S. § 11-902, a felony for a third time on September 4, 2007.

8. Chalepah was elected as Chairman of the Apache Tribe.

9. The General Council, also known as the Tribal Council, is the supreme and only governing body of the Apache Tribe. The Apache Tribe is governed by a Constitution (the "Tribal Constitution).

10. Article VI of the Tribal Constitution provides for two types of meetings to be held for tribal members to take action to govern the Apache Tribe. Pursuant to the Constitution, the Tribal Council meets annually on the third Saturday of June. At a

Tribal Council meeting, the Tribal Council can take any action needed within the guidelines and parameters of the Tribal Constitution. The Tribal Constitution also provides that special meetings may be called upon receipt of a petition signed by no less than fifty (50) members of the Apache Tribe. Article VI of the Tribal Constitution mandates that, when a special meeting is called, it must be held within ten (10) days of the calling of the special meeting. A Tribal Council may adopt and ratify the actions of a special meeting.

11. Article XIII of the Tribal Constitution which is captioned "Qualifications of Officers", provides, in part:

> Any person who has been found guilty of a felony in any city, county, state or federal court shall be ineligible to hold office. Upon the conviction of any officer or committeeman his office shall automatically become vacant.

12. On June 2, 2007 a special meeting as defined by the Tribal Constitution was held in compliance with the Tribal Constitution after receipt of a petition signed by no less than fifty (50) members of the Apache Tribe. The special meeting was held timely according to the Tribal Constitution within ten (10) days of the calling of the special meeting. Chalepah did not attend the special meeting although he had notice that it had been called.

13. At the Special Meeting, Resolution SP-TC-07-06-02 was introduced and passed by the Tribal members. Resolution 07-06-02 clarified Article VIII of the Apache Tribal Constitution. The Resolution stated that the provision rendered not only those individuals who were found guilty as ineligible to hold office but also those individuals

who pled guilty. This resolution, along with the Apache Tribal Constitution and the subsequent annual tribal council meeting vote, clearly removed Mr. Chalepah from office.

14. The annual Tribal Council meeting was held on June 16, 2007, in accordance with the provisions of the Tribal Constitution.

15. At the annual meeting, the Tribal Council passed Resolution # 006-0016-007-03, which declared Chalepah ineligible to hold office.

16. Maynahonah notified the BIA Superintendent Betty Tippiconnie ("Tippiconnie") and Mr. Dan Deerinwater of the Tribe's actions, including Chalepah's ineligibility.

17. Maynahonah repeatedly requested Tippiconnie to recognize him as the rightful Chairman of the Apache people but received no response.

18. On August 7, 2007, the Tippiconnie issued her decision refusing to recognize Maynahonah as the Chairman of the Apache Tribe.

19. Maynahonah repeatedly attempted to gain access to Tribal headquarters and funds. On September 5, 2007, Maynahonah and other officers attempted to enter Tribal headquarters. Tribal members loyal to Chalepah refused access and contacted the Caddo County Sherriff's Department[1]. Maynahonah and others were removed from the premises and were told that if they attempted to come onto Tribal property again, they would be arrested.

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[1] The Tribe does not have its own police force.

20. Maynahonah appealed Tippiconnie's decision not to recognize him as the Chairman of the Apache Tribe.

21. On November 7, 2007, Tippiconnie issued a letter stating that she would withdraw her letter declining to accept correspondence from Maynahonah but refused to recognize Maynahonah as Chairman.

22. Tippiconnie again recognized Chalepah as Chairman of the Apache Tribe.

23. During this same time, the Court of Indian Appeals was reviewing a decision by the CFR Court for the Apache Tribe regarding the validity of the elections which installed Chalepah as Chairman in 2006.

24. On November 16, 2007, the Court of Indian Appeals for the Apache Tribe of Oklahoma, found that there was no delegation of power by the Apache Tribe which allowed the Court of Indian Offenses to hear and decide on matters related to internal tribal government disputes, including the 2006 elections. The Court of Indian Appeals dismissed the case in its entirety.

25. Maynahonah is the rightful chairman of the Apache Tribe.

26. Plaintiffs believe there is no other forum in which to seek relief except this Court. At the June 16, 2008, meeting the Tribe rescinded any grant of authority to the CFR Court to hear internal tribal disputes.

COUNT 1

27. Plaintiffs incorporate paragraphs 1 - 27as set forth herein.

28. Article VI of the Tribal Constitution states that special meetings of the Apache Tribal Council may be called at either the discretion of the chairman or upon

written request of 50 members of the Apache Tribal Council. In either case, at least ten (10) days notice must be given before the meeting.

29. Chalepah called approximately twelve (12) meetings that did not comply with Article VI of the Tribal Constitution.

30. Chalepah used Maynahonah's failure to attend the invalidly called meetings as justification to remove him as Vice-Chairman.

31. Because the meetings were not held in accordance with Article VI of the Tribal Constitution, Maynahonah was not obligated to attend.

32. As such, Chalepah, did not have cause to remove Maynahonah as Vice-Chairman.

33. Furthermore, Chalepah did not follow the removal procedure set forth in Article IX of the Tribal Constitution.

34. Chalepah deprived Maynahonah of his rights to due process by removing him from office without a hearing, as required by Article IX of the Tribal Constitution.

35. Pursuant to Article XII, the vice-chairman is the successor to the chairmanship, if the chairman is unable to fulfill his obligations.

36. Chalepah is ineligible to hold office due to his felony convictions.

37. The Tribal Council, at its regularly scheduled annual meeting, validly found Chalepah ineligible to hold office.

38. Upon Chalepah's ineligibility, Maynahonah became the rightful chairman of the Apache Tribe having been duly elected to assume the term vacated by Chalepah following ineligibility.

39. Chalepah has refused to relinquish his position to Maynahonah.

40. Furthermore, Chalepah has prevented Maynahonah from entering tribal headquarters and from conducting tribal business.

WHEREFORE Plaintiffs ask this Court declare Maynahonah the rightful Chairman of the Apache Tribe.

COUNT II

41. Plaintiffs incorporate paragraphs 1 - 40 as set forth therein.

42. During Chalepah's tenure, no audit has been conducted despite numerous requests from tribal members to do so.

43. Upon information and belief, Tribal monies are being used to fund projects not related to the interests of the Tribe as a whole.

44. To ensure that the Tribe's assets are properly handled and accounted for, a forensic accounting must be conducted.

45. In addition, Plaintiffs ask that Defendant Chalepah immediately turn over all checkbooks and financial records of the Tribe to an independent third party agreed to by Plaintiffs.

46. Plaintiffs request that all funds that were not expended to further the interests of the Tribe be immediately disgorged.

WHEREFORE Plaintiffs ask the Court order a forensic accounting to be conducted during a time certain by an individual approved by Plaintiffs and to order Defendant Chalepah to immediately surrender all checkbooks and financial records of the

Tribe to said individual. Furthermore, should it be determined that funds were expended not in furtherance of the Tribe's interest, said funds must be immediately disgorged.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs request the following:

(1) that this Court declare Louis Maynahonah the Chairman of the Apache Tribe of Oklahoma;

(2) order a forensic accounting of the assets of the Apache Tribe of Oklahoma;

(3) order Defendant Chalepah to immediately surrender all checkbooks and financial records of the Tribe; and,

(4) any other relief that Court deems necessary that is just and equitable, Plaintiffs' costs and fees, including a reasonable attorney fee.

Respectfully submitted,

/s/ Courtney D. Powell

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